
SUBSTITUTE HOUSE BILL 2412

State of Washington

57th Legislature

2002 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Fromhold, Lisk, Doumit, Chandler, Grant, Hankins, Hatfield and Delvin)

Read first time 02/06/2002. Referred to Committee on .

1 AN ACT Relating to ballast water management on the Columbia river;
2 amending RCW 77.120.030, 77.120.040, 77.120.060, and 77.120.070; adding
3 a new section to chapter 77.120 RCW; and creating new sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature recognizes that western
6 states bordering on the Pacific Ocean have approved separate laws on
7 ballast water that affect commercial shipping for the protection of
8 waterways from aquatic nuisance species. Legislatures in these states
9 have recognized the international threat to waterways and the
10 difficulty that any one state has in legally and cost-effectively
11 managing this issue.

12 The states of Washington and Oregon have a unique stewardship and
13 challenge in jointly managing issues affecting the navigable waters of
14 the Columbia river system. This joint stewardship must deal
15 efficiently and effectively with ballast water management in order to
16 have an effective aquatic nuisance species prevention program, but not
17 unduly impair the regional and international trade that is so important
18 to our economies. When practical and cost-effective, implementation of
19 ballast water management laws, rules, and regulations adopted by the

1 states of Washington and Oregon should be coordinated among all
2 affected parties, including all public agencies and private interests.

3 NEW SECTION. **Sec. 2.** (1) For ballast water management in the
4 navigable waters of the Columbia river system, the director of the
5 department of fish and wildlife must monitor the activities of the task
6 force created by the state of Oregon in 2001 Or. Laws 722, concerning
7 ballast water management. Before ballast water treatment technologies
8 go into effect for the navigable waters of the Columbia river system,
9 the director, in consultation with the task force, must:

10 (a) Determine practical and cost-effective ballast water treatment
11 technologies suitable for the navigable waters of the Columbia river
12 system;

13 (b) Determine appropriate standards for discharge of treated
14 ballast water in the navigable waters of the Columbia river system;

15 (c) Determine the degree to which exchange of ballast water
16 decreases the risk of transporting aquatic nuisance species into the
17 navigable waters of the Columbia river system;

18 (d) Determine the compatibility of treatment with laws enacted by
19 the United States congress and regulations promulgated by the United
20 States coast guard and ballast water regulations by other western
21 states and British Columbia;

22 (e) Research requirements for ballast water treatment technology
23 and other areas of concern related to the possible introduction of
24 aquatic nuisance species; and

25 (f) Recommend amendments to the National Invasive Species Act of
26 1996, P.L. 104-332, for a single national system of regulation.

27 (2) The director of the department of fish and wildlife must submit
28 a report to the natural resources committees of the legislature by
29 January 2003. The report must contain the findings and recommendations
30 required in subsection (1) of this section, including a recommendation
31 for a date to require treatment of ballast water.

32 **Sec. 3.** RCW 77.120.030 and 2000 c 108 s 4 are each amended to read
33 as follows:

34 The owner or operator in charge of any vessel covered by this
35 chapter is required to ensure that the vessel under their ownership or
36 control does not discharge ballast water into the waters of the state
37 except as authorized by this section.

1 (1) Discharge into waters of the state is authorized if the vessel
2 has conducted an open sea exchange of ballast water. A vessel is
3 exempt from this requirement if the vessel's master reasonably
4 determines that such a ballast water exchange operation will threaten
5 the safety of the vessel or the vessel's crew, or is not feasible due
6 to vessel design limitations or equipment failure. If a vessel relies
7 on this exemption, then it may discharge ballast water into waters of
8 the state, subject to any requirements of treatment under subsection
9 (2) of this section and subject to RCW 77.120.040.

10 (2) After July 1, 2002, except for the navigable waters of the
11 Columbia river system, discharge of ballast water into waters of the
12 state is authorized only if there has been an open sea exchange or if
13 the vessel has treated its ballast water to meet standards set by the
14 department. When weather or extraordinary circumstances make access to
15 treatment unsafe to the vessel or crew, the master of a vessel may
16 delay compliance with any treatment required under this subsection
17 until it is safe to complete the treatment.

18 (3) The requirements of this section do not apply to a vessel
19 discharging ballast water or sediments that originated solely within
20 the waters of Washington state, the navigable waters of the Columbia
21 river system, or the internal waters of British Columbia south of
22 latitude fifty degrees north, including the waters of the Straits of
23 Georgia and Juan de Fuca.

24 (4) Open sea exchange is an exchange that occurs fifty or more
25 nautical miles offshore. If the United States coast guard requires a
26 vessel to conduct an exchange further offshore, then that distance is
27 the required distance for purposes of compliance with this chapter.

28 **Sec. 4.** RCW 77.120.040 and 2000 c 108 s 5 are each amended to read
29 as follows:

30 The owner or operator in charge of any vessel covered by this
31 chapter, except vessels traversing the navigable waters of the Columbia
32 river system, is required to ensure that the vessel under their
33 ownership or control complies with the reporting and sampling
34 requirements of this section.

35 (1) Vessels covered by this chapter must report ballast water
36 management information to the department using ballast water management
37 forms that are acceptable to the United States coast guard. The
38 frequency, manner, and form of such reporting shall be established by

1 the department by rule. Any vessel may rely on a recognized marine
2 trade association to collect and forward this information to the
3 department.

4 (2) In order to monitor the effectiveness of national and
5 international efforts to prevent the introduction of nonindigenous
6 species, all vessels covered by this chapter must submit nonindigenous
7 species ballast water monitoring data. The monitoring, sampling,
8 testing protocols, and methods of identifying nonindigenous species in
9 ballast water shall be determined by the department by rule. A vessel
10 covered by this chapter may contract with a recognized marine trade
11 association to randomly sample vessels within that association's
12 membership, and provide data to the department.

13 (3) Vessels that do not belong to a recognized marine trade
14 association must submit individual ballast tank sample data to the
15 department for each voyage.

16 (4) All data submitted to the department under subsection (2) of
17 this section shall be consistent with sampling and testing protocols as
18 adopted by the department by rule.

19 (5) The department shall adopt rules to implement this section.
20 The rules and recommendations shall be developed in consultation with
21 advisors from regulated industries and the potentially affected
22 parties, including but not limited to shipping interests, ports,
23 shellfish growers, fisheries, environmental interests, interested
24 citizens who have knowledge of the issues, and appropriate governmental
25 representatives including the United States coast guard.

26 (a) The department shall set standards for the discharge of treated
27 ballast water into the waters of the state. The rules are intended to
28 ensure that the discharge of treated ballast water poses minimal risk
29 of introducing nonindigenous species. In developing this standard, the
30 department shall consider the extent to which the requirement is
31 technologically and practically feasible. Where practical and
32 appropriate, the standards shall be compatible with standards set by
33 the United States coast guard and shall be developed in consultation
34 with federal and state agencies to ensure consistency with the federal
35 clean water act, 33 U.S.C. Sec. 1251-1387.

36 (b) The department shall adopt ballast water sampling and testing
37 protocols for monitoring the biological components of ballast water
38 that may be discharged into the waters of the state under this chapter.
39 Monitoring data is intended to assist the department in evaluating the

1 risk of new, nonindigenous species introductions from the discharge of
2 ballast water, and to evaluate the accuracy of ballast water exchange
3 practices. The sampling and testing protocols must consist of cost-
4 effective, scientifically verifiable methods that, to the extent
5 practical and without compromising the purposes of this chapter,
6 utilize easily measured indices, such as salinity, or check for species
7 that indicate the potential presence of nonindigenous species or
8 pathogenic species. The department shall specify appropriate quality
9 assurance and quality control for the sampling and testing protocols.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.120 RCW
11 to read as follows:

12 (1) The director of the department of fish and wildlife must adopt
13 rules for ballast water management in the navigable water of the
14 Columbia river system. The rules must include, but are not limited to,
15 provisions pertaining to reporting requirements and ballast water
16 discharge. No rules regarding ballast water treatment technologies for
17 use in the Columbia river system may be adopted until after the
18 conclusion of the 2003 regular legislative session.

19 (2) The monitoring, sampling, testing protocols, and methods of
20 identifying nonindigenous species in ballast water for the navigable
21 waters of the Columbia river system must be adopted by the department
22 by rule. In developing the rule, the department must take into account
23 the research and activities of the task force created under section 2
24 of this act in order to coordinate the collection of sampling and
25 testing data. The department may use third parties, research
26 organizations, or colleges and universities to collect sampling and
27 testing data, including appropriate scientific methods and protocols,
28 frequency of sampling, and other appropriate procedures.

29 (3) Rules adopted under this section must consider rules adopted by
30 the state of Oregon for ballast water management in the navigable
31 waters of the Columbia river system.

32 **Sec. 6.** RCW 77.120.060 and 2000 c 108 s 7 are each amended to read
33 as follows:

34 The legislature recognizes that international and national laws
35 relating to this chapter are changing and that state law must adapt
36 accordingly. The department shall submit to the legislature, and make
37 available to the public, a report that summarizes the results of this

1 chapter and makes recommendations for improvement to this chapter on or
2 before December 1, 2001, and a second report on or before December 1,
3 2004. The 2001 report shall describe how the costs of treatment
4 required as of July 1, 2002, will be substantially equivalent among
5 ports where treatment is required. The 2004 report must describe how
6 the states of Washington and Oregon are coordinating their efforts for
7 ballast water management on the Columbia river. The department shall
8 strive to fund the provisions of this chapter through existing
9 resources, cooperative agreements with the maritime industry, and
10 federal funding sources.

11 **Sec. 7.** RCW 77.120.070 and 2000 c 108 s 8 are each amended to read
12 as follows:

13 (1) Except as limited by subsection (2) or (3) of this section, the
14 director or the director's designee may impose a civil penalty or
15 warning for a violation of the requirements of this chapter on the
16 owner or operator in charge of a vessel who fails to comply with the
17 requirements imposed under RCW 77.120.030 (~~and~~), 77.120.040, and
18 section 5 of this act. The penalty shall not exceed five thousand
19 dollars for each violation. In determining the amount of a civil
20 penalty, the department shall consider if the violation was
21 intentional, negligent, or without any fault, and shall consider the
22 quality and nature of risks created by the violation. The owner or
23 operator subject to such a penalty may contest the determination by
24 requesting an adjudicative proceeding within twenty days. Any
25 determination not timely contested is final and may be reduced to a
26 judgment enforceable in any court with jurisdiction. If the department
27 prevails using any judicial process to collect a penalty under this
28 section, the department shall also be awarded its costs and reasonable
29 attorneys' fees.

30 (2) The civil penalty for a violation of reporting requirements of
31 RCW 77.120.040 or section 5 of this act shall not exceed five hundred
32 dollars per violation.

33 (3) Any owner or operator who knowingly, and with intent to
34 deceive, falsifies a ballast water management report form is liable for
35 a civil penalty in an amount not to exceed five thousand dollars per
36 violation, in addition to any criminal liability that may attach to the
37 filing of false documents.

1 (4) The department, in cooperation with the United States coast
2 guard, may enforce the requirements of this chapter.

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